



Having reviewed the whole evidentiary record herein and, in addition, the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant suffered accidental injuring arising out of and in the course of his employment with respondent on April 7, 1992 while installing a large electric motor. While pulling on the motor he felt a pop in his back, testifying his back felt like it "went out of place."

Claimant testified that this was the same area of the body involved in a prior injury on October 21, 1988. Claimant was evaluated and treated by Dr. Thomas L. Shriwise, Dr. Bernard M. Abrams and Dr. William O. Reed, Jr. Dr. Shriwise opined there was no functional impairment to claimant from the current injury. Dr. Abrams, on the other hand, felt claimant had suffered a ten percent (10%) permanent partial general body impairment as a result of the injury on April 7, 1992, with five percent (5%) of that due to the claimant's pre-existing condition. Dr. Abrams restricted claimant from lifting over forty (40) pounds and further advised he avoid repetitive bending, twisting, stooping and standing. Dr. Reed felt claimant's symptomatology resulted from the October 1988 incident rather than from what occurred on April 7, 1992.

It is the claimant's burden to prove, by a preponderance of the credible evidence, his entitlement to benefits in a workers compensation situation. See K.S.A. 44-501 and K.S.A. 44-508(g). See also Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Subsequent to receiving medical care, claimant was returned to work with the respondent with specific restrictions. Respondent has met these restrictions and claimant, while limited, continues to work with respondent at a comparable wage.

K.S.A. 1991 Supp. 44-510e(a) states in part:

"There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury."

Claimant, in this instance, while being given certain functional limitations, has been shown to be capable of returning to work with the respondent at a comparable wage. The Appeals Board finds the evidence presented by claimant does not overcome the presumption in K.S.A. 1991 Supp. 44-510e and, as such, claimant is not entitled to work disability.

The Special Administrative Law Judge, in computing claimant's permanent partial disability, awarded claimant a ten percent (10%) work disability. Dr. Abrams assesses claimant a ten percent (10%) functional impairment which the Appeals Board finds is proper in this matter. While the computation of the Award will not change from a ten percent (10%) work disability to a ten percent (10%) functional impairment, the Appeals Board finds the method of arriving at these numbers to be significant in this circumstance.

The Award of the Administrative Law Judge assesses fifty percent (50%) of the liability to the Kansas Workers Compensation Fund and grants respondent and the Kansas Workers Compensation Fund a credit for fifty-nine percent (59%) of the prior Award stemming from claimant's 1988 back injury. The findings and conclusions enumerated in the Award of the Special Administrative Law Judge as they relate to these issues are accurate and appropriate and the Appeals Board, finding it not necessary to repeat same, adopts these findings and conclusions as its own as if specifically set forth herein.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated March 23, 1995 shall be, and is hereby, modified in that claimant is granted an award against the respondent, a qualified self-insured, and the Kansas Workers Compensation Fund for an accidental injury occurring on April 7, 1992 and based upon an average weekly wage of \$505.68 for 234.57 weeks compensation at the reduced rate of \$0.00 per week, followed thereafter by 180.43 weeks of compensation at the unreduced rate of \$33.72 per week, in the sum of \$6,084.10 for a 10% permanent partial disability, making a total award of \$6,084.10.

No compensation is due until October 4, 1996, at which time claimant will be entitled to 180.43 weeks permanent partial general body disability at the unreduced rate of \$33.72 until fully paid, or until further order of the Director.

Future medical benefits are awarded upon proper application to and approval by the Director.

Unauthorized medical expenses up to \$350.00 are ordered paid to or on behalf of the claimant upon presentation of an itemized statement verifying same.

All compensation and medical expenses awarded and/or paid in this matter are to be borne fifty percent (50%) by the respondent and fifty percent (50%) by the Kansas Workers Compensation Fund.

Claimant's contract with his attorney is hereby approved insofar as it is not in contravention to K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are hereby assessed fifty percent (50%) to the respondent and fifty percent (50%) to the Kansas Workers Compensation Fund to be paid as follows:

William F. Morrissey	
Special Administrative Law Judge	\$150.00

Court reporter fees were assessed in the award in Docket No. 165,818 and will be paid wholly by the respondent per the order of the Special Administrative Law Judge.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:

Mark S. Gunnison, Kansas City, MO  
Larry R. Mears, Atchison, KS  
Elizabeth Kaplan, Kansas City, KS  
William F. Morrissey, Special Administrative Law Judge

**ROBERT W. DONALDSON**

**4**

**DOCKET NO. 168,159**

Philip S. Harness, Director